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No. 91-1718

In the Supreme Court of the United States

OCTOBER TERM, 1992

HAMPTON TREE FARMS, INC. AND SUNTIP CO., PETITIONERS

v.

EDWARD R. MADIGAN, SECRETARY OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether, in these actions against the Forest Service, petitioners may enforce a preliminary injunction that was entered in a prior action but vacated on appeal for lack of subject matter jurisdiction.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A11) is reported at 956 F.2d 869. The opinion (Pet. App. A12-A17) and judgments (Pet. App. A18-A23, A24-A28) of the district court are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 2, 1991. A petition for rehearing was denied on January 30, 1992. Pet. App. A29-A31. The petition for a writ of certiorari was filed on

April 28, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Petitioners were successful bidders in timber sales conducted by the Forest Service under the National Forest Management Act of 1976, 16 U.S.C. 472a. See also 36 C.F.R. Pt. 223. The resulting contracts required petitioners to cut, remove, and pay for timber by specified times.

In the early 1980s, petitioners and other Pacific Northwest timber purchasers encountered financial problems that made it difficult for them to meet the contract deadlines. To address that situation, in December 1983 the Forest Service adopted the Multi-Sale Extension Program (MSEP), 48 Fed. Reg. 54,812 (1983). Pet. App. A3-A4; see also *Sierra Pacific Indus.* v. *Block*, 643 F. Supp. 1256, 1262-1265 (N.D. Cal. 1986), aff'd in part, rev'd in part, 866 F.2d 1099 (9th Cir. 1989). Under the MSEP, qualified purchasers could obtain more time to complete certain timber-sale contracts by submitting plans containing new work schedules for Forest Service approval. The deadline for submission of MSEP plans was February 15, 1984. 48 Fed. Reg. at 54,814; Pet. App. A34. Petitioners did not file any MSEP plans prior to that deadline.

b. Meanwhile, in April 1983, one of the private timber companies that had contracted to buy timber from the Forest Service brought suit to prevent the Forest Service from enforcing the contracts. *North Side Lumber Co.* v. *Block*, Civ. No. 83-490BU (D. Or.). North Side argued that "contingencies unforeseen at the time the [timber] contracts were made render[ed] the contracts void under the contract law doctrines of commercial impracticability, frustration

of purpose, and impossibility of performance." *North Side Lumber Co.* v. *Block*, 753 F.2d 1482, 1484 (9th Cir.), certs. denied, 474 U.S. 919 and 474 U.S. 931 (1985). North Side sought injunctive relief on behalf of a class of private timber companies.

In February 1984, the district court in *North Side* entered a preliminary injunction barring the Forest Service from "enforcing in any manner" certain timber contracts held by members of a conditionally certified class that included petitioners. Pet. 4; see Pet. App. A4. The injunction also barred the Forest Service "from enforcing the current February 15, 1984 deadline for the submission" of an MSEP plan by any class member who "could include one or more of those [timber-sale contracts] * * * in such a plan." Pet. 4.

c. The Ninth Circuit vacated and remanded, holding that, under the constraints of the Little Tucker Act, 28 U.S.C. 1346(a)(2), the district court lacked subject matter jurisdiction over North Side's impracticability claim. *North Side Lumber Co.* v. *Block*, 753 F.2d 1482, 1484-1486 (9th Cir. 1985). The court also held that, because the injunction was "based on the impracticability claim," the injunction should be vacated. *Id.* at 1486. It remanded for further proceedings on the statutory claims raised by several publicly held timber companies that had intervened as plaintiffs. *Ibid.*; see also *id.* at 1483, 1484 n.2.

The Ninth Circuit issued its opinion on February 20, 1985. *North Side*, 753 F.2d at 1482. The court stayed its mandate, however, pending a petition for rehearing and subsequent petition for certiorari. As a result, the Ninth Circuit's mandate in *North Side* did not issue until November 28, 1985, after this Court denied certiorari. *Bohemia, Inc.* v. *Block*, 474

U.S. 919 (Oct. 21, 1985); *North Side Lumber Co.* v. *Block*, 474 U.S. 931 (Oct. 21, 1985).[1]

d. In early May 1985, after receiving the Ninth Circuit's adverse decision in *North Side*, petitioners for the first time submitted MSEP plans to the Forest Service, seeking to extend the performance deadlines for their timber-sale contracts. The Forest Service delayed action on the plans in light of "the uncertainties of the current court action," Pet. App. A14; see also *id.* at A5.[2] In mid-May 1985, the *North Side* plaintiffs asked the district court to issue an order requiring the Forest Service to show cause why it should not be held in contempt. They contended that the Forest Service had violated the preliminary injunction by failing to act on their MSEP plans. Gov't C.A. Br. 13 & n.14. The district court never ruled on the show-cause motion. Thus, there was never a judicial determination that the Forest Service had violated the injunction or that the Forest Service should be held in contempt.

e. Immediately after this Court denied certiorari in *North Side*, the government reached a settlement with most of the *North Side* plaintiffs. The settlement provided for approval of MSEP plans filed by those plaintiffs who agreed to the settlement terms. Because petitioners did not agree to the settlement

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[1] After the Ninth Circuit granted a stay of mandate pending the *North Side* plaintiffs' petition for certiorari, the Forest Service applied to this Court for an order vacating the stay. That application was denied on July 24, 1985, by then-Justice Rehnquist, sitting as Circuit Justice, in *Block* v. *North Side Lumber Co.*, 473 U.S. 1307.

[2] Petitioners resubmitted their MSEP plans in December 1985, after the *North Side* injunction was dissolved. The Forest Service declined to approve those plans on the ground that they were untimely. Pet. App. A5.

terms, their plans were not approved. Some eight months after the Ninth Circuit issued its mandate in *North Side*, thereby dissolving the preliminary injunction, the district court dismissed petitioners from the class action for failure to prosecute. Gov't C.A. Br. 14-15.

2. The existing performance deadlines in petitioners' timber-sale contracts, absent their extension, eventually expired. In 1986 and 1987, the Forest Service declared petitioners in default; it later terminated their contracts and resold the timber in some of the contracts to others. Pet. 6 & n.3; Pet. App. A5. In addition, as a condition for awarding new timber-sale contracts to petitioners, the Forest Service required them to post surety bonds in higher amounts.

3. The instant petition concerns two actions, consolidated on appeal, that were commenced after the Ninth Circuit's decision in *North Side*.[3]

The first action was commenced by petitioner Hampton Tree Farms in June 1985. *Hampton Tree Farms, Inc.* v. *Block*, Civil No. 85-1085-BU (D. Or.). In that case, Hampton sought an order requiring the Forest Service to approve its MSEP plan and thus extend

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[3] While these two cases were pending in the district court, petitioners also sought approval of their MSEPs by administrative means. In May 1989, the Associate Deputy Chief of the Forest Service determined that the *North Side* injunction did not grant class members "the right to submit MSEP's during its pendency," and that even if it did, after its "dissolution * * * for want of jurisdiction, the injunction did not continue to provide [petitioners] * * * any rights." C.A. App. 180. Accordingly, he concluded that "the MSEP's submitted by [petitioners] after the February 15, 1984, deadline established by the final Multi-Sale Extension Policy were untimely." *Ibid.*

its contract deadlines. In April 1987, the district court granted summary judgment in favor of Hampton and directed the Forest Service to "accept and approve Hampton's Multi-Sale Extension plan." Pet. App. A17. In the court's view, Hampton's plan was timely because it was filed before the *North Side* injunction "was dissolved in November, 1985." *Ibid.* In March 1990, the district court denied the Forest Service's motion to alter or amend the judgment and entered final judgment in favor of Hampton. *Id.* at A18-A23.

The second action was commenced in December 1987, when petitioner Suntip Co. filed a substantially similar complaint requesting similar relief against the Forest Service. *Suntip Co.* v. *Yeutter*, Civ. No. 87-1360-JMB (D. Or.). In June 1990, the district court entered a final judgment in favor of Suntip virtually identical to the final judgment entered in Hampton's action.

In each case, the district court held that the MSEP was timely filed because it was filed before the *North Side* injunction was dissolved by the issuance of the Ninth Circuit's mandate. Pet. App. A20, A26. Based on that holding, the court further held that (1) petitioners were entitled to extensions of their contracts; (2) they were not in default under any of the contracts; (3) the Forest Service breached the contracts by terminating them; (4) termination of the contracts or resale of the timber by the Forest Service entitled petitioners to cancel the contracts without liability; and (5) the requirements and remedies normally imposed on defaulting purchasers, such as enhanced bonding requirements, could not apply to petitioners. *Id.* at A20-A22, A26-A28.

4. The Ninth Circuit reversed, agreeing with the Forest Service's contention that "in issuing [the] judgment for [petitioners] * * *, the district court was retroactively enforcing a void injunction." Pet. App. A6. The "lesson" that the court of appeals derived from case law was that "once an injunction in a civil case has been invalidated, rights granted under the injunction no longer exist and cannot be enforced." *Id.* at A7. Applying the precedent here, the court held that "[petitioners] cannot rely on the voided injunction to justify filing their MSEP plans after the February 15, 1984, deadline." *Id.* at A9. The court observed that "[r]ather than seeking contract extensions in a timely fashion, [petitioners] elected to take a chance on an invalid injunction." *Ibid.* The court concluded that "[t]he district court had no authority to rewrite the Forest Service MSEP to accommodate contractors who had rejected the MSEP deadline while waiting to see how the injunction fared on appeal." *Ibid.*[4]

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[4] The court of appeals also decided other issues adversely to petitioners, which are not raised in this Court. The district court had held that "policies of the Forest Service * * * adapting to the existence of the *North Side* injunction were not thereafter changed in accordance with requirements of law, thereby rendering unenforceable any changes to such policies otherwise attempted." Pet. App. A26. The court of appeals rejected the district court's "assumption that, in complying with the [*North Side*] injunction, the Forest Service had adopted an agency rule," *id.* at A9, that could, in turn, be changed only by formal rulemaking proceedings, *id.* at A10. The court of appeals observed that the "February 15, 1984, deadline was the only one ever published in the Federal Register" by the Forest Service, and, consequently, that "the Forest Service's rejection of * * * [petitioners'] MSEP plans due to lateness could not have been the result of an improperly created or modified agency rule." *Ibid.* The district court had

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. The court of appeals correctly held that the void *North Side* injunction provided no basis for requiring the Forest Seervice to approve petitioners' untimely MSEP plans. At the time the district court imposed that requirement, the *North Side* injunction had long since been dissolved and the *North Side* case dismissed. Thus, as the court of appeals observed, the district court's ruling amounted to the "retroactive[] enforc[ement]" of a "void injunction." Pet. App. A6. As such, the district court's ruling violated established principles and was properly reversed.

"The right to remedial relief falls with an injunction which events prove was erroneously issued, * * * and *a fortiori* when the injunction or restraining order was beyond the jurisdiction of the court." *United States* v. *United Mine Workers*, 330 U.S. 258, 295 (1947). In accordance with that principle, this Court has held that "if a district court does not have subject-matter jurisdiction over the underlying action, and the process was not issued in aid of determining that jurisdiction, then the process is void and an order of civil contempt based on refusal to honor it must be reversed." *United States Catholic Confer-*

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also held that the Forest Service was "estopped from denying the full force and effectiveness of the *North Side* injunction." *Id.* at A11 (quoting *id.* at A26). The court of appeals held that because "the *North Side* injunction was issued without jurisdiction and was held on appeal to be void," the court did not need to decide "what relevance, if any, the doctrine of estoppel bears to this case." *Id.* at A11.

ence v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76 (1988); see also *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 451-452 (1911).[5]

Although most decisions applying the principle that a void injunction cannot be enforced concern orders of civil contempt, the principle is not limited to that context. For example, in *Zeilstra* v. *Tarr*, 466 F.2d 111, 112-113 (6th Cir. 1972), the plaintiff sought an order requiring the Selective Service to reclassify him for purposes of draft eligibility; he relied on an injunction entered in a separate class action that was vacated on appeal for lack of subject matter jurisdiction. See *Gregory* v. *Tarr*, 436 F.2d 513 (6th Cir.), cert. denied, 403 U.S. 922 (1971). The Sixth Circuit in *Zeilstra* rejected the plaintiff's reliance on the void injunction, stating that the prior injunction "had no validity initially and certainly [had] no[ne] after we had reversed and set it aside." 466 F.2d at 113.[6]

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[5] Accord *United Elec. Workers* v. *163 Pleasant Street Corp.*, 960 F.2d 1080, 1084 (1st Cir. 1992) ("Given that civil contempt is designed to coerce compliance with the court's decree, it is logical that the [contempt] order itself should fall with a showing that the court was without authority to enter the decree") (quoting *Willy* v. *Coastal Corp.*, 112 S. Ct. 1076, 1081 (1992)); *Tekkno Laboratories, Inc.* v. *Perales*, 933 F.2d 1093, 1098-1099 (2d Cir. 1991); *In re U.S. Catholic Conference*, 885 F.2d 1020, 1023, 1031 (2d Cir. 1989) (holding, on remand from this Court, that district court lacked subject matter jurisdiction over suit, and thus could not issue subpoenas *duces tecum* to non-parties and could not enforce them by civil contempt sanctions), cert. denied, 495 U.S. 918 (1990).

[6] Accord *Sandler* v. *Tarr*, 345 F. Supp. 612, 621-622 (D. Md. 1971) (rejecting similar claim based on same injunction, stating "[i]t is one thing to say that [a former injunction]

The principle underlying *Zeilstra* and the other decisions cited above applies with full force in the present case. In contrast to the decisions concerning civil contempt, there was no judicial determination in this case that the Forest Service had violated the *North Side* injunction or that any remedial purpose could be served by an order of civil contempt. Cf. *Gompers*, 221 U.S. at 441, 451. Moreover, as the court of appeals recognized, petitioners sought a remedy for a situation of their own making: the termination of their contracts stemmed from petitioners' decision to "take a chance on an invalid injunction," "[r]ather than seeking contract extensions in a timely fashion." Pet. App. A9. The court of appeals properly concluded that "[t]he district court had no authority to rewrite the Forest Service MSEP to accommodate contractors who had rejected the MSEP deadline while waiting to see how the injunction fared on appeal." *Ibid.*

Petitioners nonetheless insist that an "extra-jurisdictional preliminary injunction is not a nullity" but "has consequences." Pet. 9. At most, such "consequences" relate to possible criminal contempt and other sanctions issued while an injunction is in effect. Thus, criminal contempt sanctions generally survive the invalidation of the underlying injunction. See *Willy* v. *Coastal Corp.*, 112 S. Ct. at 1080; *Catholic Conference*, 487 U.S. at 78-79; *United States* v. *Mine Workers*, *supra*; *In re Establishment Inspection of Hern Iron Works, Inc.*, 881 F.2d 722, 725-726 (9th

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* * * must be obeyed before it is dissolved[;] [i]t is quite another thing to say that relief may now be based on the fact that [it] * * * had existed at an earlier time"), aff'd, 463 F.2d 1096 (4th Cir.) (per curiam), cert. denied, 409 U.S. 990 (1972); see also *Pasquier* v. *Tarr*, 444 F.2d 116, 117 (5th Cir. 1971).

Cir. 1989); but cf. *In re Providence Journal Co.*, 820 F.2d 1342, 1347, 1353 (1st Cir. 1986) (criminal contempt sanctions unenforceable if imposed to enforce a "transparently invalid" injunction or "entered by a court clearly without jurisdiction over the contemnors or the subject matter"), cert. dismissed, 485 U.S. 693 (1988). But this Court has made clear that a different rule applies to the "right to remedial relief"; that right "falls with [the] injunction." *Catholic Conference*, 487 U.S. at 79 (quoting *United States* v. *Mine Workers*, 330 U.S. at 294-295).

The differing rules for criminal and civil contempt orders reflect the "different purposes and necessities of the two types of orders." *Catholic Conference*, 487 U.S. at 79. A criminal contempt order is intended to punish the contemnor and vindicate the authority of the court; a civil contempt order is intended to provide relief to the party who obtained the underlying injunction by ordering the contemnor to pay fines or to comply with the injunction. *Gompers*, 221 U.S. at 441-443. Because the present case concerned petitioners' right to relief under a void injunction, and not an order imposing punitive sanctions, petitioners' reliance on decisions applying the rule for criminal contempt is misplaced.[7]

For similar reasons, petitioners err in relying on *Cooter & Gell* v. *Hartmarx Corp.*, 110 S. Ct. 2447, 2455-2456 (1990), and *Willy* v. *Coastal Corp.*, 112

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[7] Thus, *United States* v. *Shipp*, 203 U.S. 563 (1906), cited at Pet. 9, is inapposite. *Shipp* held that a state official—who was accused of allowing a mob to lynch a prisoner he was ordered to protect while the prisoner's habeas corpus petition was under review in the federal courts—could be tried for criminal contempt in a federal court.

S. Ct. at 1080-1081. Those decisions concerned punitive sanctions imposed under Fed. R. Civ. P. 11. In holding that orders imposing Rule 11 sanctions survived the voluntary dismissal (in *Cooter & Gell*) and the dismissal for lack of subject matter jurisdiction (in *Willy*) of the underlying action, the Court relied on its decisions concerning criminal contempt sanctions and distinguished its decisions concerning civil contempt orders. In *Cooter & Gell*, the Court wrote that "[l]ike the imposition of * * * [criminal] contempt sanctions, the imposition of a Rule 11 sanction is not a judgment on the merits [but instead] * * * requires the determination of a collateral issue." 110 S. Ct. at 2456. In *Willy*, the Court distinguished *Catholic Conference* on the ground that "[a] civil contempt order [such as that involved in *Catholic Conference*] has much different purposes than a Rule 11 sanction." 112 S. Ct. at 1081. The Court in *Willy* explained:

> Rule 11 is designed to punish a party who has already violated the court's rules. * * * Given that civil contempt is designed to coerce compliance with the court's decree, it is logical that the order itself should fall with a showing that the court was without authority to enter the decree.

Ibid. (citing *Cooter & Gell* and *United States* v. *Mine Workers*).

The distinction drawn in *Cooter & Gell* and *Willy* between punitive sanctions designed to punish an abuse of the judicial process, on the one hand, and remedial orders designed to effectuate a decree, on the other, supports the decision of the court of appeals in this case. The only meaningful distinction between the present case and *Catholic Conference* is that,

unlike the plaintiff in *Catholic Conference*, petitioners did not even have an order of civil contempt to rely upon in seeking relief; they relied solely on an injunction entered by a court that "was without authority to enter [it]" (*Willy*, 112 S. Ct. at 1081). Thus, petitioners cannot make even a colorable claim that some process independent of the void injunction exists to be enforced. Accordingly, the Court's decision in *Catholic Conference*, as explained in *Willy*, compelled the conclusion that petitioners' right to relief expired with the dissolution of the *North Side* injunction.[8]

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[8] Petitioners' reliance (Pet. 12-13 & n.7) on *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U.S. 371 (1940), and *Stoll* v. *Gottlieb*, 305 U.S. 165 (1938), is unavailing. Those decisions held that final, unappealed decisions of federal courts, later deemed in excess of jurisdiction, were nonetheless *res judicata* and thus immune from collateral, though not direct, attack. See *Willy*, 112 S. Ct. at 1080 (discussing *Chicot County* and *Stoll*). That holding is inapposite here, because the *North Side* injunction was directly and successfully attacked on appeal to the Ninth Circuit. *North Side Lumber*, 753 F.2d at 1486.

Littell v. *Morton*, 369 F. Supp. 411, 419-420 (D. Md. 1974), aff'd, 519 F.2d 1399 (4th Cir. 1975) (Table), cited at Pet. 14, is likewise inapposite. In *Littell*, an attorney had obtained an injunction in a prior case, later set aside on appeal, that barred his employer from terminating his contract to provide legal services. While the injunction was in effect, the attorney rendered competent, professional services to his employer. The court in *Littell* exercised its equitable powers to award restitution to the attorney for the benefits he provided to his employer during the life of the injunction. As the court of appeals in the instant case recognized, *Littell* was based "on a theory of restitution." Pet. App. A8. Petitioners fail to identify, and we do not discern, any benefit they conferred on the Forest Service during the life of the *North Side* injunction that would justify the relief they sought—even if we assume, *arguendo*, that such an equitable theory could ever

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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support a judicial order barring an agency from applying an otherwise valid deadline set forth in published regulations. See *OPM* v. *Richmond*, 110 S. Ct. 2465 (1990).

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